



Clark County, Washington *Endangered Species Act Information*

The ESA and development in Clark County

Clark County is committed to ESA compliance and the recovery of wild salmon, steelhead, and other threatened and endangered species. At the same time, the county wants to minimize burdens on its citizens resulting from ESA-related regulations. One of our priorities is to keep people informed about how the ESA might affect them. Issues of concern to the county's development community are addressed below:

How will the ESA affect me as a contractor?

A key feature of the ESA is the 4(d) rule, which requires NMFS to issue regulations that are "necessary and advisable to provide for the conservation of the species." The 4(d) rule applies to new development and redevelopment in both urban and rural areas throughout the region. The final 4(d) rule for steelhead became effective on September 8, 2000. The final 4(d) rule for salmon took effect on January 8, 2001. It is not likely to result in a dramatic change in the way the county conducts its business. However, both the county and anyone involved in development activities within the county will be at increased risk of lawsuits by individuals, groups, or agencies for "taking" a listed species in violation of the ESA. These lawsuits may be very difficult to prove and will take a great deal of time to decide.



What is the county doing to reduce the risk of lawsuits?

The county's 4(d) Compliance Plan is designed to reduce the risk of lawsuits to the county and its citizens. The county has begun implementation of the plan, which will likely take three to five years to complete. It includes evaluating all of the county's critical areas ordinances (these deal with land that is environmentally sensitive) and other relevant programs and activities and submitting them to the National Marine Fisheries Service (NMFS) and the U.S. Fish & Wildlife Service (USFWS) for eventual inclusion in future versions of the 4(d) rule. While there are no guarantees of protection from lawsuits, the best interim protection for developers, other parties or individuals, and the county is to carefully follow existing county ordinances and other land use regulations.

Will I be informed if ordinances change?

There is a good chance that the county will have to change some of

its critical areas ordinances and other regulations, programs, and activities to fully comply with the 4(d) rule. This will involve a public involvement process that is consistent with the county's existing guidelines for regulatory change offering opportunities for public input and comment. For example, during the last several years, erosion control and stormwater management in Clark County have changed dramatically. The development community and other interested parties have worked cooperatively with the county to update the regulations associated with these activities. Under the ESA, other land-use and development regulations may need to be similarly adjusted. The process of change takes time, and any adjustments are unlikely to take place immediately.

How will the ESA listings of threatened fish affect permit processing?

■ In the short-term, review of proposed developments will proceed according to current regulations. In

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the next three to five years, however, changes in county environmental regulations are likely.

- Projects that may affect the habitat of listed species and those that are federally funded or involve federal permits face increased permitting requirements.

- Development projects, regardless of their location in the watershed, can have an adverse impact on fish habitat. Therefore, county inspection, code enforcement, and monitoring for clearing, grading, and erosion control have increased and are likely to further increase over time.

Will there be additional fees/ time delays associated with ESA issues?

Currently, there is no ESA review process or associated fees outside of the State Environmental Policy Act (SEPA) checklist. Again, in the short-term, county review processes are not likely to change. As regulations are reviewed and modified over the next three to five years, however, new review procedures may be developed. Environmental reviews to address a project's impact on fish habitat are likely to be more thorough. Any additional review procedures will take additional time, and therefore will likely increase overall review costs. Compliance with county regulations during site development and construction is extremely important. Because stormwater and erosion control is critical to the protection of fish species, the penalties for erosion control violations were significantly increased in 1999.

What about vesting? If I already have permits, will my approval conditions change under the ESA?

Although your development rights would remain vested under current county laws, this vesting would not provide protection from third party lawsuits or enforcement activities

taken by NMFS or USFWS. That's because the ESA is a federal law and federal law supercedes county law. Any individual who exercises vesting rights in violation of the ESA faces the possibility of a third-party lawsuit or enforcement action from NMFS or USFWS. As a developer, if you have any doubt about ESA compliance, it is safer to err on the side of environmental protections for salmon. NMFS has issued "take" guidelines in which it lists the categories of activities that ESA enforcement actions will focus on. You can find these guidelines on the NMFS web site at <http://www.nwr.noaa.gov/1salmon/salmesa/final4d.htm>.

How can I stay informed on ESA-related permit information as it develops?

- For questions about how the ESA may affect your development plans, call Joseph Gall at (360)397-2375, ext. 4399.

- As more detailed information becomes available, the Community Development Department will publicize that information on the county's web site at www.co.clark.wa.us.

- You can talk to a community development representative or obtain informational handouts at 1408 Franklin Street in Vancouver, or at 701 E. Main Street in Battle Ground (360)687-7126.

- For general information, you can also call the county's Land Use Hotline at (360)397-2375, ext. 4489.

- For questions about the Endangered Species Act or about efforts by Clark County to protect salmonid species, please contact the Clark County Endangered Species Act Program at (360)397-2022.

- You can also visit the Clark County ESA web site at www.saveoursalmon.com. The ESA Program produces and distributes a quarterly newsletter that can be found on the web site or mailed to you directly.

- NMFS has maps that describe the general range and distribution of the listed steelhead and salmon. The Clark County web site also features maps that show the distribution of bull trout, chum, fall chinook, coho, and summer and winter steelhead. You can view these maps from the county's home page at www.co.clark.wa.us. Link to Maps Online.



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